

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-68614
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: March 24, 2014
County: Wayne #41

ADMINISTRATIVE LAW JUDGE: Dale Malewska

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on March 24, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on September 13, 2013, to establish an OI and debt collection recoupment of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to not engage in unauthorized transactions.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is February 2012 through February 2012.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and

- the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$ [REDACTED] or more, or
- the total OI amount is less than \$ [REDACTED] and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (7-1-2013), p. 12.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (7-1-2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a Respondent who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the Respondent has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1; see *also* 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true.

See M Civ JI 8.01.

In this case, the Department had requested a disqualification hearing to establish an over-issuance of benefits as a result of a single FAP trafficking incident. Furthermore, the Department seeks disqualification of one year for the Respondent who has failed to appear for this hearing. See *also* BAM 700 for IPV disqualifications and OI.

The OIG witness [REDACTED] provided, sufficient, un rebutted testimony and other credible evidence to establish that in March of 2012 a joint USDA-OIG investigation determined that the [REDACTED], had inadequate store [food-type] inventory or SNAP merchandise to support the food stamp redemptions submitted by the vendor on a monthly basis in comparison to their peers in the surrounding vicinity.

As a result of its investigation the USDA-OIG determined that the [REDACTED] was being used as a front for FAP trafficking; its SNAP eligibility was revoked.

In February of 2012, the Respondent - who lived [REDACTED] - engaged in a single incident of trafficking in the amount of [REDACTED]. The OIG established misuse of the Respondent's EBT totaling [REDACTED] over-issuance of FAP benefits. Exhibit #1, page 29.

Supported by persuasive documentary evidence the OIG explained the above referenced investigation - as well as the vendor's revocation of eligibility from the SNAP program. The store in question had little counter space,¹ no grocery carts, and no hand-carry baskets and appeared to function more as a general merchandise/limited offering restaurant.

The OIG witness said that the store in question did not have the supply train [or counter space] necessary to support the sizes of their EBT reported transactions – and then to be able to replenish – within a reasonable amount of time.

The focus of this store was that of convenience; single serving items and snack food and little SNAP food items. The Respondent's transaction at the vendor's place of business demonstrated a highly suspicious transaction - given the amount of the redemption; the location of the Vendor in relation to Dearborn Heights, Michigan and the impossibility of processing such a sale with the inherently limited counter space or customer service devices.

Based on the testimony and the documentary evidence, it is concluded that the OIG established, under a clear and convincing standard, that Respondent committed an IPV in this matter – resulting in a debt and OI of FAP \$ [REDACTED] for the period of February 9, 2012. It is unlikely that the Vendor had \$ [REDACTED] of SNAP inventory at one time. See Exhibit #1 - page 20.

This being the Respondent's first IPV violation - a one year disqualification is appropriate.

¹The amount of benefit allegedly passed to the vendor would represent a bulk of grocery product [if there were such SNAP products] that would not fit on the counter for check out. See Depart. Ex. 1 at pages 20 - 21.

Disqualification

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or a court decision determines that FAP benefits were trafficked. The FAP trafficking disqualifications are a result of the following actions:

- fraudulently use, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or
- redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

A disqualified recipient remains a member of an active group as long as she lives with them, and other eligible group members may continue to receive benefits.

[BAM 720, p. 13]

Respondents who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to Medicaid. BAM 720. Respondents are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Over-issuance

When a Respondent group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case an OI was established in the amount of \$422.75.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent did commit an intentional program violation (IPV).
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.



Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/21/14

Date Mailed: 4/22/14

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

DM/tb

cc:

